APPEAL AND ERROR—SETTLEMENT OF EXCEPTIONS BY STIPULATION OF PARTIES AFTER EXPIRATION OF TIME LIMIT.—After the time set by court rule for settling and filing a bill of exceptions, the appellant entered into a stipulation with the appellee to extend the time for so doing. When the record settled according to this agreement came before the court of error, the appellee moved to strike out the bill of exceptions on the ground that it had not been settled according to law. To have this point decided the United States circuit court certified the following question to the Supreme Court: "Is the bill of exceptions as above set forth settled and certified to this court in contravention of law in that the term had expired before the same was offered for settlement?" *Held,* that the exceptions could not be considered, on the ground that jurisdiction cannot be conferred on the courts of the United States by consent and the court rule was for the acceleration of procedure and could not be waived by the parties. *Exporters of Manufacturers' Products Co.* v. *Butterworth-Judson Co.,* U. S. Sup. Ct. Adv. Op. No. 390 (April 10, 1922).

By this judgment the Supreme Court has reversed its former practice of allowing delay in settling exceptions to be regulated by the parties. This practice was recognized by implication as late as the case of *Jennings* v. *Philadelphia Ry.,* 218 U. S. 255, in which relief was refused only because no actual consent was shown, the court saying: "There must be express consent, or consent which would equitably estop the opposite party from denying that he consented." And in *Waldron* v. *Waldron,* 156 U. S. 361, a case identical with the principal case except that in it consent was given during the term, it was held that consent would extend the time during which a bill of exceptions could be settled. As the theory of the instant case is that jurisdiction is given only by a strict compliance with the court rule, and there is in the rule no express exception made for the case of consent given during the term, it can make no difference whether it is given during the term or after the term has expired. The view which the Supreme Court has swung over to is sustained by the great weight of authority among the state courts. *Crowe* v. *Charleston,* 62 W. Va. 91, 3 Ann. Cas. 1110; *Perkins* v. *Perkins,* 173 Mich. 690. There are, however, scattered cases contrary to the proposition that strict compliance with the statutes regulating the time for exceptions is necessary for the appellate court to have jurisdiction of them. In New York, in the case of a delayed appeal, it was held that the court of appeal has general power to review judgments and that consent does not confer it but is merely a waiver of the right to insist that the time has passed for bringing the appeal. *Jacobs* v. *Morange,* 1 Daly (N. Y.), 523. In *Morrison* v. *Craven,* 120 N. C. 327, the court held in regard to a delayed docketing of an appeal that "Where the counsel waive the required diligence the court will not exact it." *Sleck* v. *King,* 3 Pa. St. 211, which involved a delay in taking appeal, lays down the rule that if the other party has appeared in court he cannot deny its jurisdiction. Coming to cases more directly in point, in *Perryman* v. *Burgster,* 4 Port. (Ala.) 505, the transcript was considered, although it was not filed in time. See also

*State* v. *Williams,* 64 Ind. 226. In *Steven* v. *Neb. Ins. Co.,* 29 Neb. 187, the transcript was filed too late, but the court received it, saying: "The district court has jurisdiction over the subject matter of the action, and by the defendant in error agreeing to a continuance of the cause it conferred upon that court jurisdiction of its person." In the last analysis, the question certified really resolves itself into an inquiry whether the time limit for settling exceptions is for the benefit of the litigants alone or is designed summarily to accelerate the course of judicial proceedings without reference to the convenience or wishes of the parties.

BILLS AND NOTES—PAYEE AS HOLDER IN DUE COURSE.—D made a note payable to P in payment for certain shares of stock purchased from M. The note was delivered to M, who thereafter sold it to P. In an action on the note it was *held,* the fact that P was the payee did not preclude him from being a holder in due course within the meaning of the Negotiable Instruments Law. *Bank* v. *Randell* (Neb., 1922), 186 N. W. 70.

The holding in the instant case turns upon the construction to be placed on the word "negotiate" as used in Section 30 of N. I. L., which provides: "An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder completed by delivery." Section 52 of the act, which defines holder in due course, prescribes that at the time the instrument was "negotiated" to him he must have had no notice, etc. The act also provides specifically that the payee is a holder (§ 191) and that every holder is *prima facie* a holder in due course (§ 59). It would appear elementary that such construction should be given ambiguous terms in the statute as will harmonize all the sections if possible. This can be accomplished by considering the first sentence of Section 30 as a complete definition of "negotiate" and the second sentence as illustrative of the usual methods of negotiation, but not necessarily the sole methods. If the payee is prima facie a holder in due course delivery to him by the maker or by a third person intrusted by the maker with the instrument must be a negotiation to him within the meaning of sections 30 and 52. Before N. I. L. it was well settled that the payee might be a holder in due course. *Armstrong* v. *Am. Bank,* 133 U. S. 443. The Nebraska court, however, had held to the contrary. *Camp* v. *Sturdevant,* 16 Neb. 693. Some courts have held that N. I. L. effected some change in this respect. *Vander Ploeg* v. *Van Zuuk,* 135 Ia. 350, L. R. A. (n. s.) 490, *note,* 6 MICH. L. REV. 77; *Bank* v. *Walch,* 76 Or. 272; *Bank* v. *Edwards,* 243 Mo. 553; *Bowles* v. *Clark,* 59 Wash. 336 L. R. A. (n. s.) 613, *note.* The Iowa and Oregon courts, however, have denied that a payee may never be a holder in due course. *Vander Ploeg* v. *Van Zuuk, supra; Simpson* v. *Bank,* 94 Or. 147. The prevailing view is that the statute has not changed the Law of Merchants. *Boston Steel & Iron Co.* v. *Steuer,* 183 Mass. 140; *Liberty Trust Co.* v. *Tilton,* 217 Mass. 462, L. R. A. 1915 B 144, *note; Ex Parte Goldberg & Lewis,* 191 Ala. 356, L. R. A.